

### REMARKS

This is a full and timely response to the outstanding final Office Action mailed April 24, 2003 (Paper No. 5). Upon entry of this response, claims 1-3 and 5-13 are pending in the application. Claims 5-7 have been amended and claim 4 has been cancelled. Applicants assert that the amendments add no new subject matter to the present application. Applicants respectfully request that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

#### 1. Rejection of Claims 1-3 under 35 U.S.C. §103

Claims 1-3 have been rejected under §103(a) as allegedly obvious over *Shurmer* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

##### a. Claim 1

Applicants respectfully submit that claim 1 is allowable for at least the reason that the proposed combination of *Shurmer* in view of *Schulman* does not disclose, teach, or suggest at least the feature of a “means for collecting *bit burst analysis...information*” as recited in claim 1.

The Office Action admits that “*Shurmer* fails to teach for collecting and displaying network parameters bit burst.” (Office Action, paragraph 5). The Office Action alleges that

“*Schulman* teaches for a network analyzer collecting and displaying network parameters such as packet sized minimum and/or maximum (bit burst).” (Office Action, paragraph 6). The Office Action thus equates the packet size minimum and maximum collected by *Schulman* with the bit burst analysis information collected by Applicants’ invention. Applicants respectfully disagree.

A description of burst analysis is provided in U.S. Patent Application Serial No. 09/118,106, entitled “System and Method for Characterizing Burst Information,” filed on July 17, 1998, which is incorporated by reference into the present application. As described in the incorporated application, bit burst analysis involves detecting bursts of data traffic on the network and then categorizing the bursts for analysis and display by a network management system. (09/118,106, p. 6, lines 11-17). Based on its data rate (bits/sec), each detected burst is put into a category or “bucket,” where each category is relative to a fixed rate (09/118,106, p. 13, lines 10-13; p. 15, line 20 to p. 16, line 10). In one embodiment of the invention, the fixed rate is the committed information rate (CIR) guaranteed by the service provider, and example categories include 0%-100% CIR, 101%-151% CIR, 151%-200% CIR, and 201%-300% CIR. (101 in FIG. 5 of present application). The bit burst analysis therefore provides a count of how many bursts were detected in each category, and/or the total number of bits detected in each category.

*Schulman* discloses, at most, collecting a minimum packet size statistic and a maximum packet size statistic. *Schulman* does not disclose “means for collecting ***bit burst analysis...information***,” as recited in claim 1, which involves counting categories of traffic, where the categories are relative to a fixed size. Thus, *Schulman* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Accordingly, the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the claimed limitations of a “means for collecting bit burst analysis...information” as recited in claim 1. Since the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the above-described features recited in claim 1, a *prima facie* case establishing an obviousness rejection by *Shurmer* in view of *Schulman* has not been made. Thus, claim 1 is not obvious under the proposed combination of *Shurmer* in view of *Schulman*, and the rejection should be withdrawn.

b. Claims 2-3

Since claim 1 is allowable, Applicants respectfully submit that claims 2-3 are allowable for at least the reason that they depend from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 2-3 be withdrawn.

2. Rejection of Claims 4-7 under 35 U.S.C. §103

Claims 4-7 have been rejected under §103(a) as allegedly obvious over *Shurmer* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 4

Claim 4 is cancelled without prejudice, waiver, or disclaimer, and therefore, the rejection of this claim is rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of this cancelled claim in a continuing application, if Applicants so choose, and do not intend to dedicate any of the cancelled subject matter to the public.

b. Claim 5

Applicants respectfully submit that amended claim 5 is allowable for at least the reason that the proposed combination of *Shurmer* in view of *Schulman* does not disclose, teach, or suggest at least the feature of “a plurality of network performance parameter views, comprising *bit burst analysis*...” as recited in amended claim 5.

The Office Action admits that “*Shurmer* fails to teach for collecting and displaying network parameters bit burst analysis.” (Office Action, paragraph 5). The Office Action alleges that “*Schulman* teaches for a network analyzer collecting and displaying network parameters such as packet sized minimum and/or maximum (bit burst).” (Office Action, paragraph 6). The Office Action thus equates the packet size minimum and maximum collected by *Schulman* with the bit burst analysis information collected by Applicants’ invention. Applicants respectfully disagree.

A description of burst analysis is provided in U.S. Patent Application Serial No. 09/118,106, entitled “System and Method for Characterizing Burst Information,” filed on July 17, 1998, which is incorporated by reference into the present application. As described in the incorporated application, bit burst analysis involves detecting bursts of data traffic on the

network and then categorizing the bursts for analysis and display by a network management system. (09/118,106, p. 6, lines 11-17). Based on its data rate (bits/sec), each detected burst is put into a category or “bucket,” where each category is relative to a fixed rate (09/118,106, p. 13, lines 10-13; p. 15, line 20 to p. 16, line 10). In one embodiment of the invention, the fixed rate is the committed information rate (CIR) guaranteed by the service provider, and example categories include 0%-100% CIR, 101%-151% CIR, 151%-200% CIR, and 201%-300% CIR. (101 in FIG. 5 of present application). The bit burst analysis therefore provides a count of how many bursts were detected in each category, and/or the total number of bits detected in each category.

*Schulman* discloses, at most, collecting a minimum packet size statistic and a maximum packet size statistic. *Schulman* does not disclose a “a plurality of network performance parameter views, comprising *bit burst analysis*...,” as recited in claim 5, which involves counting categories of traffic, where the categories are relative to a fixed size. Thus, *Schulman* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Accordingly, the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the claimed limitations of a “a plurality of network performance parameter views, comprising bit burst analysis...” as recited in claim 5. Since the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the above-described features recited in claim 5, a prima facie case establishing an obviousness rejection by *Shurmer* in view of *Schulman* has not been made. Thus, claim 5 is not obvious under the proposed combination of *Shurmer* in view of *Schulman*, and the rejection should be withdrawn.

c. Claims 6-8

Since claim 5 is allowable, Applicants respectfully submit that claims 6-8 are allowable for at least the reason that they depend from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 6-8 be withdrawn.

3. Rejection of Claims 8-10 under 35 U.S.C. §103

Claims 8-10 have been rejected under §103(a) as allegedly obvious over *Shurmer* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 8

Applicants respectfully submit that claim 8 is allowable for at least the reason that the proposed combination of *Shurmer* in view of *Schulman* does not disclose, teach, or suggest at least the feature of a “collecting a plurality of network performance parameter views including a *bit burst analysis* performance parameter view” as recited in claim 8.

The Office Action admits that “*Shurmer* fails to teach for collecting and displaying network parameters bit burst...” (Office Action, paragraph 5). The Office Action alleges that “*Schulman* teaches for a network analyzer collecting and displaying network parameters such as packet sized minimum and/or maximum (bit burst).” (Office Action, paragraph 6). The Office

Action thus equates the packet size minimum and maximum collected by *Schulman* with the bit burst analysis information collected by Applicants' invention. Applicants respectfully disagree.

A description of burst analysis is provided in U.S. Patent Application Serial No. 09/118,106, entitled "System and Method for Characterizing Burst Information," filed on July 17, 1998, which is incorporated by reference into the present application. As described in the incorporated application, bit burst analysis involves detecting bursts of data traffic on the network and then categorizing the bursts for analysis and display by a network management system. (09/118,106, p. 6, lines 11-17). Based on its data rate (bits/sec), each detected burst is put into a category or "bucket," where each category is relative to a fixed rate (09/118,106, p. 13, lines 10-13; p. 15, line 20 to p. 16, line 10). In one embodiment of the invention, the fixed rate is the committed information rate (CIR) guaranteed by the service provider, and example categories include 0%-100% CIR, 101%-151% CIR, 151%-200% CIR, and 201%-300% CIR. (101 in FIG. 5 of present application). The bit burst analysis therefore provides a count of how many bursts were detected in each category, and/or the total number of bits detected in each category.

*Schulman* discloses, at most, collecting a minimum packet size statistic and a maximum packet size statistic. *Schulman* does not disclose "collecting a plurality of network performance parameter views including a *bit burst analysis* performance parameter view," as recited in claim 8, which involves counting categories of traffic, where the categories are relative to a fixed size. Thus, *Schulman* fails to disclose, teach or suggest every element of the Applicants' claimed invention.

Accordingly, the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the claimed limitations of "collecting a plurality of network performance parameter

views including a bit burst analysis performance parameter view” as recited in claim 8. Since the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the above-described features recited in claim 8, a *prima facie* case establishing an obviousness rejection by *Shurmer* in view of *Schulman* has not been made. Thus, claim 8 is not obvious under the proposed combination of *Shurmer* in view of *Schulman*, and the rejection should be withdrawn.

b. Claims 9-10

Since claim 8 is allowable, Applicants respectfully submit that claims 9-10 are allowable for at least the reason that they depend from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 9-10 be withdrawn.

4. Rejection of Claims 11-13 under 35 U.S.C. §103

Claims 11-13 have been rejected under §103(a) as allegedly obvious over *Shurmer* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claim 11

Applicants respectfully submit that claim 11 is allowable for at least the reason that the proposed combination of *Shurmer* in view of *Schulman* does not disclose, teach, or suggest at



least the feature of a “collecting a plurality of network performance parameter views including a *bit burst analysis* performance parameter view” as recited in claim 11.

The Office Action admits that “*Shurmer* fails to teach for collecting and displaying network parameters bit burst...” (Office Action, paragraph 5). The Office Action alleges that “*Schulman* teaches for a network analyzer collecting and displaying network parameters such as packet sized minimum and/or maximum (bit burst).” (Office Action, paragraph 6). The Office Action thus equates the packet size minimum and maximum collected by *Schulman* with the bit burst analysis information collected by Applicants’ invention. Applicants respectfully disagree.

A description of burst analysis is provided in U.S. Patent Application Serial No. 09/118,106, entitled “System and Method for Characterizing Burst Information,” filed on July 17, 1998, which is incorporated by reference into the present application. As described in the incorporated application, bit burst analysis involves detecting bursts of data traffic on the network and then categorizing the bursts for analysis and display by a network management system. (09/118,106, p. 6, lines 11-17). Based on its data rate (bits/sec), each detected burst is put into a category or “bucket,” where each category is relative to a fixed rate (09/118,106, p. 13, lines 10-13; p. 15, line 20 to p. 16, line 10). In one embodiment of the invention, the fixed rate is the committed information rate (CIR) guaranteed by the service provider, and example categories include 0%-100% CIR, 101%-151% CIR, 151%-200% CIR, and 201%-300% CIR. (101 in FIG. 5 of present application). The bit burst analysis therefore provides a count of how many bursts were detected in each category, and/or the total number of bits detected in each category.

*Schulman* discloses, at most, collecting a minimum packet size statistic and a maximum packet size statistic. *Schulman* does not disclose “collecting a plurality of network performance

parameter views including a *bit burst analysis* performance parameter view,” as recited in claim 11, which involves counting categories of traffic, where the categories are relative to a fixed size. Thus, *Schulman* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Accordingly, the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the claimed limitations of “collecting a plurality of network performance parameter views including a bit burst analysis performance parameter view” as recited in claim 11. Since the proposed combination of *Shurmer* in view of *Schulman* does not teach at least the above-described features recited in claim 11, a *prima facie* case establishing an obviousness rejection by *Shurmer* in view of *Schulman* has not been made. Thus, claim 11 is not obvious under the proposed combination of *Shurmer* in view of *Schulman*, and the rejection should be withdrawn.

b. Claims 12-13

Since claim 11 is allowable, Applicants respectfully submit that claims 12-13 are allowable for at least the reason that they depend from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 9-10 be withdrawn.

**CONCLUSION**

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-3 and 5-13 be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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